



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS, LOCAL 394

Complainant

v.

CITY OF MANCHESTER, POLICE
DEPARTMENT

Respondent

CASE NO. P-0706:22

DECISION NO. 92-194

APPEARANCES

Representing IBPO Local 394:

James T. Masteralexis, Esq., Counsel

Representing City of Manchester, Police Department:

David Hodgen, Chief Negotiator

Also appearing:

Louis Craig, Chief
Edward Kelley, Local 394
Virginia Farland, Local 394
Donald Vandal, Captain

BACKGROUND

On January 10, 1991, the International Brotherhood of Police Officers (IBPO), Local 394 (Union) filed unfair labor practice (ULP) charges against the City of Manchester (City) alleging violations of RSA 273-A:5 I (a) relative to the manner in which employee representation rights were allegedly handled and controlled by the City in a disciplinary proceeding. The City filed its answer on January 25, 1991. After numerous continuances requested by the City, the case was heard by the PELRB on February 27, 1992 and April 1, 1992. The PELRB issued its decision (Decision No. 92-73) on May 4, 1992. The City filed a Motion for Rehearing on May 22, 1992. The Union filed a Motion Opposing

Rehearing on June 8, 1992. The PELRB granted the Motion for Rehearing on June 11, 1992. The rehearing was conducted before the PELRB on September 17, 1992, resulting in this decision.

FINDINGS OF FACT

1. Rehearing on this matter consisted of legal arguments and limited testimony none of which controverted the sequence of events detailed in our Decision No. 92-73; therefore, Findings No. 1 through 12 in Decision No. 92-73 are reaffirmed and incorporated herein by reference as to the chronology of events which prompted the original ULP in this case.
2. Captain Vandal's cutting short the meeting time for the employee to consult with Winn was not intended to diminish her consultative rights with a union representative but, instead, occurred because of pressing police business, notably an in-progress homicide investigation and an eight year old drug case.
3. Vandal was not aware of the beeper system for Ed Kelley and Greg Murphy at the time he terminated the consultative meeting between the employee and Winn; therefore, he was not aware of how quickly Kelley could have responded to the employee's repeated requests that Kelley represent her because he was familiar with her case.
4. Winn did not tell Vandal that he (Winn) was uncomfortable handling this case until after Vandal terminated the employee's administrative interview and after he (Vandal) denied Kelley's involvement in the case on behalf of the employee.

DECISION AND ORDER

Upon rehearing, we conclude that Captain Vandal's actions which cut short the meeting time allowed to the employee and a union representative were not motivated by any malice or intent to diminish or eliminate the employee's consultative rights prior to an administrative disciplinary meeting with a representative of management. Since we find his conduct was not culpable, there is no need to attach the stigma of the finding of an unfair labor practice to it.

Notwithstanding this modification to our findings in Decision No. 92-73, we do not depart from our earlier conclusions that, in disciplinary situations or in labor-management meetings where discipline could result, the employee(s) involved must be afforded the opportunity of availing themselves of competent union representation. Where that representation is reasonably available from two or more competent individuals, the employee(s) should have the opportunity of selecting which individual will consult with or represent them, so long as such selection will not unreasonably delay the administrative meeting process. Under the facts of this case, the employer's administrative meeting process would not have been unreasonably delayed had Kelley been permitted to represent the employee involved.

We direct the following:

1. For the reasons set forth, the finding of unfair labor practice in Case No. 92-73 is VACATED.
2. The PELRB maintains the policy that employees facing a disciplinary (or potentially disciplinary) meeting with management must be able to avail themselves of competent union representation prior to and during such meetings. If more than one union representative is reasonably available to consult with and represent the employee(s), then the employee(s) shall be permitted to select which individual will consult with or represent them in such proceedings.

So ordered.

Signed this 21st day of December, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and Arthur Blanchette present and voting.